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Bail Slip

The Appellants/Accused, 1 to 3 viz., Kandamatha Chetty (A1) Raju(A2) and Senna(A3) were directed to the released on bail in and by the Order of this court dt.7.4.1999 made in Crl.MP No.2177/99 in CA No.62/99 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6-7-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.62 of 1999

1.Kandamatha Chetty
2.Raju
3.Senna .. Appellants/Accused

vs

State represented by
Inspector of Police
Hasanur
Sathyamangalam Taluk
Periyar District .. Respondent/Complainant

Criminal appeal filed under Sec.374(2) of the Code of Criminal Procedure against the judgment of the I Additional District Judge and Chief Judicial Magistrate, Erode, dated 7.1.1999 in S.C.No.136 of 1998.

For Appellants : Mr.T.Munirathina Naidu
for Mr.R.T.Duraisamy

For Respondent : Mr.S.Jayakumar
Additional Public
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This appeal has been brought forth by the appellants three in number, and who stood charged, tried and found guilty under Sections 302 read with 34 and 201 read with 302 of I.P.C. and awarded life imprisonment for the former offence and three years Rigorous Imprisonment for the

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latter offence, aggrieved over the judgment of the learned I Additional Sessions Judge, Erode.

2. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.1, an agriculturist, is a resident of Neithalapuram village. A-1 is also holding lands in the said village. A-3 has been cultivating his lands. A-2 is a friend of A-1. The deceased Kalasamy was the brother of one Ammani, who was the wife of P.W.1. The deceased was assisting P.W.1 in his agricultural operations. There were land disputes between the first accused and P.W.1. P.W.6 was the concubine of A-1. P.W.7 Rathina, is the daughter of P.W.6. P.W.7 was given in marriage to one Vellaichamy of Chithode, who was working as a Peon in a College. Due to the family quarrel, she used to go often to Neithalapuram and be with the parents. During her visits, she developed intimacy with Kalasamy. On one occasion Kalasamy took her to Karnataka State and stayed with her for a period of three months. On coming to know, A-1 and A-2 went over there and brought her back, and a panchayat was constituted, wherein on advise, she went with her husband back. But, the same came to be known to the entire village, and it caused damage to the reputation of the first accused. Thus, A-1 developed a grudge against the said Kalasamy.

(b) On 5.6.1998 during evening hours, the said Kalasamy went to the field of P.W.3. At that time, all the three accused came there. A-3 dragged him to some distance. A-3 tied his hands with a towel. A-2 closed his mouth and nose, while A-1 strangulated him with another towel. Thus, by suffocation caused, he died. The accused left the place of occurrence. The occurrence was witnessed by P.W.3. At the time of occurrence, P.W.1 was not in the village. When he returned the next morning, he was informed that Kalasamy who left the house in the previous evening, did not come back; but, they were informed that the dead body of Kalasamy was found in the field of P.W.3. Then, they went over there and saw the dead body of Kalasamy. Immediately, P.W.1 went to P.W.2 the Village Administrative Officer, and gave a report Ex.P1. P.Ws.1 and 2 went to Hasanur Police Station and handed over Ex.P1 report to P.W.14, a Grade I Constable, who was in-charge of the Police Station that time. Ex.P1 report was received by him at 4.00 P.M. on 6.6.1998, on the basis of which a case came to be registered in Crime No.26/98 under Sec.174 of Cr.P.C. The printed First Information Report Ex.P13 was despatched to the Court.

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(c) P.W.15 the Inspector of Police, on receipt of the copy of the F.I.R., took up investigation, proceeded to the spot, made an inspection at about 5.30 P.M. in the presence

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of two witnesses and prepared an observation mahazar Ex.P14 and a rough sketch Ex.P15. He conducted inquest on the dead body of Kalasamy in the presence of witnesses and panchayatdars and prepared an inquest report Ex.P16. The dead body was sent to the Government Hospital along with a requisition for conduct of autopsy.

(d) P.W.8 the Medical Officer, attached to the Government Primary Health Centre, Thalavady, on receipt of the requisition, conducted autopsy on the dead body of Kalasamy and found the following injuries.

> "Prominent swelling (edema) present in front of neck and both lateral sides neck and slight edema present behind his neck. 4 cm length x 3 cm breadth abrasion seen over chin: Abrasions present all toes of both lower limbs: Penis and scrotum are seen with swelling."

The Doctor has issued Ex.P4 the postmortem certificate, with his opinion that the deceased would appear to have died of asphyxia due to compression of neck.

(e) On receipt of the postmortem certificate, the Investigating Officer converted the case to one under Sec.302 of I.P.C., and sent a report Ex.P17 to the concerned Officials. During investigation, A-1 and A-2 were arrested on 18.6.1998 at 8.30 A.M. At that time, A-1 gave a confessional statement, which was recorded, and the admissible part was marked as Ex.P18. He produced M.O.1 a towel, which was recovered under a mahazar Ex.P19. A-3 was arrested at 1.00 P.M. the same day. He gave a confessional statement, which was recorded. The admissible part was marked as Ex.P20, pursuant to which he produced M.O.2 a towel, which was recovered under a mahazar Ex.P10. M.Os.1 and 2 were also despatched to the Court. On completion of investigation, the final report was filed before the committal Court.

3. The case was committed to Court of Session. Necessary charges were framed. The case was tried.

4. In order to substantiate the accusations made, the prosecution examined 15 witnesses and relied on 20 exhibits and 2 material objects. On completion of evidence on the side of the prosecution, the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witnesses were examined. The trial Court on hearing the submissions made and scrutiny of the materials, found that the offence is proved beyond reasonable doubt and convicted them and awarded the punishment, which is the subject matter of challenge in this appeal.

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5. The learned Counsel appearing for the appellant inter alia would submit that the prosecution has failed to prove any motive for the occurrence; that the evidence of the prosecution witnesses in implicating the appellants are unnatural and untrustworthy; that the lower Court has also failed to see that the evidence of P.W.3 is of unworthy mentioning, and it cannot form basis for a conviction; that the occurrence has taken place on 5.6.1998; but, P.W.3 was examined only on 16.6.1998 after 11 days; that it is highly improbable that P.W.3, a villager, who is having a residence in the same place and who witnessed the occurrence, according to the prosecution, was waiting for a period of 10 days; and that even at the time of inquest, if he was available, he has not given any statement whispering about the occurrence.

6. Added further the learned Counsel that apart from that, it is pertinent to point out that the accused were arrested on 18.6.1998, and the alleged confessional statements were also given that day; that it is pertinent to note that the statement alleged to have been made by P.W.3 that he witnessed the occurrence, has also reached the Court only on 19.6.1998, though he has given the statement on 16.6.1998, and thus, it would be quite clear that after the arrest of the accused, P.W.3 was picked up, and a statement was recorded, and it is given an ante date as if he gave a statement on 16.6.1998, and the same was sent to the Court on 19.6.1998; that all these would clearly reveal that the police agency had no direct evidence to offer, and under such circumstances, they have picked up P.W.3, recorded a statement and brought forth before the Court in order to make it believe that P.W.3 was an eyewitness; that the other part of the evidence projected by the prosecution, was the alleged recovery of M.Os.1 and 2 towels; that the evidence put forth in that respect, is shaky; that apart from that, it cannot form basis for a conviction; that so long as the evidence of P.W.3 remains unacceptable, the prosecution had no case to place before the Court, and in such circumstances, the lower Court's judgment has got to be set aside, and they are entitled for an acquittal.

7. The Court heard the learned Additional Public Prosecutor on the above contentions.

8. It is not in dispute that the said deceased Kalasamy died out of asphyxia due to compression of neck. There is ample evidence brought forth before the trial Court through P.W.8 the Doctor, who conducted autopsy on the dead body, and his certificate Ex.P4. The said fact was not disputed by the appellants either before the lower Court or before this Court, and thus, it could be safely concluded that the deceased Kalasamy died out of asphyxia caused by strangulation.

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9. The only question that arose before the lower Court and equally here also, is that whether the prosecution has proved the case against the appellants that at the place of occurrence, all the three accused were there, and they also participated in the crime of causing asphyxia and throttling him. In the instant case, the only evidence which was available according to the prosecution and projected before the lower Court was the evidence of P.W.3, an eyewitness. According to P.W.3, he was nearby at the time of occurrence and witnessed the entire occurrence also at about 6.45 P.M. on 5.6.1998. It is pertinent to point out that he is not a stranger; but, he belonged to the same village, which is a small one, and he was also available at the time of occurrence. It remains to be stated that the case came to be registered the very day, and the inspection was also made by the Police Officer. Apart from that, the inquest on the dead body was conducted the very next day, and if to be so, it is highly improbable that P.W.3 a villager, though he had the direct knowledge and had witnessed the occurrence, has not come forward to whisper about the occurrence to any one in the village at all for a period of 10 days.

10. It is pertinent to point out that P.W.3, according to the prosecution, made such a statement on 16.6.1998, and further, the prosecution would come forward to state that A-1, A-2 and A-3 were arrested on 18.6.1998, and A-2 and A-3 gave confessional statements, pursuant to which M.Os.1 and 2 which, according to the prosecution, were the weapons of crime, were also recovered. If to be so, the prosecution has no explanation to offer how the statement of P.W.3 was recorded on 16.6.1998 and how it happened to be sent to the Court along with the other documents on 19.6.1998. This Court is able to see sufficient force in the contention put forth by the learned Counsel for the appellants that the statement has been recorded not on 16.6.1998, but subsequently after the arrest of the accused on 18.6.1998 and in order to make it a belief affair that P.W.3 was an eyewitness to the occurrence. The Court, in short, can say that the evidence of P.W.3 suffers from improbabilities, and thus, it becomes untrustworthy. If the evidence of P.W.3 remains unconvincing and unacceptable, the prosecution had no further evidence to offer, except the recovery. The Court is of the considered opinion that it is not a conclusive proof in a case of murder like this, and mere recovery would be highly unsafe to base a conviction. Hence, this Court is of the view that the charges levelled against the appellants/accused were not proved beyond reasonable doubt, and they are entitled for acquittal.

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11. In the result, this criminal appeal is allowed, setting aside the judgment of conviction and sentence passed by the lower Court. The appellants/accused are

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acquitted of the charges levelled against them. It is reported that the appellants are on bail. Hence, the bail bonds executed by them, shall stand cancelled.

Nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To;

1) The I Additional District Judge cum Chief Judicial Magistrate, Erode.

2) The Judicial Magistrate, Sathyamangalam.

3) -Do-Thro' The Chief Judicial Magistrte, Periyar at Erode.

4) The District Collector, Erode District.

5) The Director General of Police, Chennai.

6) The Public Prosecutor, Madras.

7) The Superintendent, Central Prison, Coimbatore.

8) The Inspector of Police, Hasanur, Sathyamangalam Taluk Periyar District

JE(C.O)
BG/13.07.2005.

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